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REVISED DRAFT

ANNOTATED LIST OF STATUTORY AND REGULATORY PROVISIONS UNDER BILL C-13

EXAMPLES OF PROJECTS APPROVED UNDER THE PROVISIONS AND THE RATIONALE FOR INCLUSION OF THE PROVISIONS ON THE LIST

NOTE: (1) ITEMS REQUIRING DISCUSSIONS WITH DEPARTMENTS OR AGENCIES WILL BE ADDRESSED ON A BILATERAL BASIS.

(2) THE GOVERNOR IN COUNCIL [G.I.C.] PROVISIONS ON THE LIST WILL FORM A SEPARATE REGULATION UNDER THE ACT. THE ITEM NUMBERS OF THESE FIFTEEN PROVISIONS ARE: 1, 2, 27, 36, 72, 75, 81, 84, 85, 106, 128, 157, 158, 160, 181.

FEARO
September 19, 1991

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LIST OF STATUTORY AND REGULATORY PROVISIONS UNDER BILL C-13

BACKGROUND

Bill C-13, the proposed *Canadian Environmental Assessment Act* (CEAA), requires that an environmental assessment be conducted before the federal government makes a project decision. Section 5 of the Bill identifies four categories of decision making which could trigger an environmental assessment, they are when the federal government:

- is the proponent of a project;
- makes federal funds available for a project;
- makes federal lands available for a project; and
- evokes a statutory or regulatory provision which allows a project to proceed.

Paragraph 55(1)(g) of the Bill will provide the authority to make a regulation listing the statutory and regulatory provisions which could trigger an environmental assessment of a project. The attached annotated list of provisions describes each provision and offers a rationale for its inclusion on the list. This information also indicates whether there has been a court case concerning the need for an environmental assessment under the provision. The documentation also reveals if further analysis and consultation are needed before either deleting the provision from the list or confirming that it should remain on it. Finally, the attached materials state where a provision should be removed from the list.

CREATION OF THE DISCUSSION DRAFT LIST

To date, there have been two rounds of consultations among federal departments and agencies on the draft list. The first round spanned the spring and summer of 1990. At that time, federal departments and agencies were invited to suggest which of the statutory and regulatory provisions they administer might be put on the draft list. Decisions by departments and agencies regarding which provisions to add to the list were guided by a set of inclusion criteria proposed by the Department of Justice. The original criteria were:

1. the provision provides an authority to issue a permit or licence, grant an approval, or exercise any other power that would permit a project or any part thereof

to proceed;

2. the power contained in the provision is exercised by a federal authority;

3. the provision is evoked relatively early in the planning stages of a project and certainly before any final decisions are taken which would have the effect of permitting the project to proceed;

4. the provision applies to projects whose environmental effects are not negligible - environmentally benign projects will be itemized on an exclusion list;

5. the provision provides some authority to deal with the environmental effects of projects;

6. the provision provides the necessary authority to implement a significant proportion of the environmental recommendations that would arise from an environmental assessment of any project to which the legislation applies.

It should be noted that the Federal Court of Appeal's decision in the Oldman River Dam case and the wording adopted in subsections 16(2) and 34(2) of Bill C-78, now C-13, as tabled in June 1990 rendered the fifth and sixth criteria obsolete.

A second round of consultations among departments and agencies about which provisions to include on the list began last winter and is still underway. This phase of the consultations has generated several additional criteria to guide the development of the list. Essentially, these criteria identify the kinds of provisions which should not be on the list. They are:

7. provisions which grant general regulation-making powers should not be included as these regulations are covered by the policy assessment process, not Bill C-13;

8. provisions that cannot control environmentally-relevant projects, such as issuing a trading licence to generate revenue or to register documents, should not be included;

9. provisions that allow for the deviation from a prescribed standard where the deviation must achieve an equivalent standard are not to be included;

10. provisions that are used exclusively for emergency purposes are not to be included.

REFINING THE LIST

It is expected that several developments will result in refinements to the current version of the list. First, the extensive public consultation process with provinces, territorial governments, and other stakeholders which is now beginning will provide valuable and needed suggestions on how to improve the list. Second, any amendments to Bill C-13 adopted by Parliament could well influence the kinds of provisions which should appear on the list. Third, ongoing consultations with departments about the list will help refine it. Indeed, it is recognized that there is some duplication between projects covered under Bill C-13's subsection 5(c), dealing with federal lands, and projects covered by provisions on this list such as under the Territorial Lands Act. Further research is now underway to determine how to minimize such duplication. Finally, after the above steps have occurred, further public commentary will be elicited following prepublication of the draft regulation containing the list of statutory and regulatory provisions in Part I of the Canada Gazette. Collectively, these review processes should yield a significantly improved list.

OVERVIEW OF THE LIST

One way to view the list is to analyze it by the department or agency which administers specific provisions. A frequency distribution of provisions by department or agency is provided below:

Department/Agency Administering Provision	Number of Provisions
AECB	8
AGRICULTURE	11
CANADA-NEWFOUNDLAND BOARD	5
CANADA-NOVA SCOTIA BOARD	5
COGLA	9
COMMUNICATIONS	4
DIAND	43
EMPLOYMENT AND IMMIGRATION	1
ENERGY, MINES & RESOURCES	2
ENVIRONMENT	31
FISHERIES AND OCEANS	2
FORESTRY	4
NATIONAL ARCHIVES*	1
NATIONAL ENERGY BOARD	12
NATIONAL RESEARCH COUNCIL*	2
NTA	31
TRANSPORT CANADA	9

MORE THAN ONE DEPARTMENT ADMINISTERING	2
GOVERNOR IN COUNCIL PROVISIONS	15
TOTAL**	182

Note: * = proposed that provisions be deleted.
** = individual numbers do not add up to 182 since the GIC provisions are reported twice. Once under the GIC heading, and a second time for the individual department or agency which administers the provision.

To a certain extent, this profile indicates the range of projects subsumed by the list of statutory and regulatory provisions.

A second perspective of the list identifies the major Acts on the list. It is expected that this outline will enable particular readers to focus on areas of specific interest to them. These Acts are the:

Arctic Waters Pollution Prevention Act
Atomic Energy Control Act
Canada Agricultural Products Act
Canada-Newfoundland Atlantic Accord Implementation Act
Canada-Nova Scotia Offshore Petroleum Resource Accord Implementation Act
Canada Wildlife Act
Canadian Environmental Protection Act
Fisheries Act
Forestry Development and Research Act
Health of Animals Act
Indian Act
Migratory Birds Convention Act
National Energy Board Act
National Parks Act
National Transportation Act
Navigable Waters Protection Act
Oil and Gas Production and Conservation Act
Railway Act
Railway Safety Act
Territorial Lands Act
Yukon Act
Yukon Placer Mining Act
Yukon Quartz Mining Act

FURTHER INFORMATION ABOUT THE LIST

Further information about the list can be obtained from Mr. M. Lascelles at (819) 997-2211. His address is:

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The following provisions are prescribed for the purposes of subsection 5(d) of the Canadian Environmental Assessment Act:

(1) **Subsection 10(1) of the Arctic Waters Pollution Prevention Act**[3,8,19]

G.in C. may require plans and specifications relating to the work to determine whether "waste" would occur.

Background: the decision-making subsection is 10(3) not 10(1) and it should replace the cited subsection. The provision should be on the list under C-13 since projects approved under the subsection would likely raise environmental concerns about pollution of arctic waters. Two departments -EMR and DIAND - use 10(3). A DIAND-related project coming under 10(3) would be the construction of an oil rig. There are no known EARP cases dealing with the provision.

(2) **Subsection 13(1) of the Arctic Waters Pollution Prevention Act**[17,19]

G. in C. may cause ship cargo or other material on board to be destroyed or removed where it is believed that "waste" is being or may be deposited.

Background: This provision is only evoked in emergency situations. Such projects would be undertaken by a federal authority and thus would be a subsection 5(a) (a federal authority is the project proponent) rather than a subsection 5(d) type project where the proponent would be a private sector firm. Recent discussions with Transport Canada have confirmed that this provision should be deleted from the list.

(3) **Subsection 9(1) of the Atomic Energy Control Regulations under the Atomic Energy Control Act**[1]

Board may issue licence to operate a nuclear facility.

Background: Such a licence was issued for the 3.5 million kilowatt Darlington Nuclear Generating Station. More generally, facilities granted operating licences under this subsection are first granted construction licences under Paragraph 10(1)(a). The environmental

assessment conducted at that stage would include issues involving the operation of the facility. As such, this provision could be deleted from the list.

(4) Paragraph 10(1)(a) of the Atomic Energy Control Regulations under the Atomic Energy Control Act[1]

Approval of Board required to construct or acquire a nuclear facility.

Background: Such projects can raise environmental concerns and thus their approval should be listed in the regulation under C-13. The Lepreau Nuclear Generating Station was reviewed under the current Guidelines Order at this stage of approval by the Board. There have been no EARP cases contesting the use of this provision.

(5) Subsection 25(2) of the Atomic Energy Control Regulations under the Atomic Energy Control Act[1]

Approval of Board required to abandon or dispose of a prescribed substance.

Background: since environmental issues can arise when radioactive substances are abandoned or disposed of, this provision is on the list. There are no recent cases involving the use of this provision, nor has the provision been subjected to EARP court challenges.

(6) Paragraph 7(1)(c) of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act[1]

Board may issue licence to suspend or cease licensed activity at mining facility.

Background: Projects approved under this provision can generate environmental concerns and so it is included on the list. The provision was used in the Quirke and Panel uranium mines near Elliot Lake in Ontario. There

have been no EARP court cases involving this provision.

(7) Paragraph 7(1)(d) of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act[1]

Board may issue licence to decommission a mining facility.

Background: decommissioning of uranium facilities can raise environmental concerns, thus the provision is on the list. Projects which could be subject to this provision include the planned decommissioning of the Denison and Stanleigh uranium mines in the Elliot lake area. There have been no EARP court cases on these provisions.

(8) Subsection 8(1) of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act[1]

Board may issue licence to site, construct or operate a mine or mill.

Background: proposed projects such as the development of five new uranium mines in Saskatchewan raise environmental issues and thus the provision should be covered by C-13. These mines will be assessed under the Guidelines Order in a joint review with the province of Saskatchewan. There have been no EARP cases on this provision.

(9) Section 9 of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act[1]

Board may issue approval for the abandonment of a mining facility.

Background: This provision raises environmental concerns, so it is covered by C-13. AECB recently approved the abandonment of an uranium tailings area

after it had decommissioned Agnew Lakes Mines in Ontario. No known EARP cases dealing with this provision.

(10) Section 34 of the Uranium and Thorium Mining Regulations under the Atomic Energy Control Act[1]

Approval of Board required to remove waste rock, tailings from mine area or to use it for construction purposes.

Background: projects covered by this provision could involve environmental issues, so it is listed under C-13. There have not been any recent projects under this provision, nor have there been any EARP court cases on it.

(11) Section 2 of the British Columbia Indian Reserves Mineral Resources Act[2]

Permission from Indian Agent required to authorize prospecting or right of entry on Indian Reserve.

Background: since permission under this provision allows mineral resource extraction on a reserve and such projects could well involve environmental concerns, it is on the list under C-13. There have been no EARP cases regarding this provision.

(12) Subsection 10(3) of the Dairy Product Regulations under the Canada Agricultural Products Act[3]

Director shall register establishment and issue Certificate of Registration if conditions set out in regulations are met.

Background: this provision may be a candidate for deletion from the list since it would not appear to be a decision-making provision. Agriculture Canada wants

to revisit whether to include this provision once the proposed amendments to C-13 are tabled.

(13) Subsection 7(3) of the Egg Regulations under the Canada Agricultural Products Act[3]

Director shall register establishment and issue Certificate of Registration if conditions set out in regulations are met.

Background: same status as #12.

(14) Subsection 11(1) of the Processed Products Regulations under the Canada Agricultural Products Act[3]

Director shall register establishment and issue Certificate of Registration if conditions set out in regulations are met.

Background: same status as #s 12 and 13.

(15) Subsection 14(4) of the Processed Poultry Regulations under the Canada Agricultural Products Act[3]

Director shall register establishment and issue Certificate of Registration if conditions set out in regulations are met.

Background: same status as #s 12, 13, and 14.

(16) Section 4 of the Wildlife Area Regulations under the Canada Wildlife Act[4]

Minister may issue permit to carry on an otherwise prohibited activity in a wildlife area.

Background: it is desirable to conduct an environmental assessment to determine if permission to carry out activities such as livestock grazing in a wildlife area

would pose environmental concerns. As such, the provision is on the list. There have not been any EARP-related cases involving this provision.

(17) Subsection 86(1) of the Canada-Newfoundland Atlantic Accord Implementation Act'

Board may issue licence for subsurface storage of petroleum or other substance.

Background: this provision may merit inclusion on the list under C-13 since projects under it could raise environmental concerns. Inclusion of the provision on the list has not been discussed with the Canada-Newfoundland Board. See items # 22 and #33 for comparable provisions under other Acts covering different areas in Canada.

(18) Paragraph 138(1)(b) of the Canada-Newfoundland Atlantic Accord Implementation Act'

Board may authorize each work or activity proposed to be carried on.

Background: this provision may warrant inclusion since it could authorise projects which require an environmental assessment. Inclusion of this provision has not been discussed with the Canada-Newfoundland Board. See items #33 and #118 for comparable provisions under other Acts covering different areas in Canada.

(19) Subsection 153(1) of the Canada-Newfoundland Atlantic Accord Implementation Act'

Chief Conservation Officer may order commencement, continuation or increase of production of petroleum.

Background: projects initiated by this provision may raise environmental concerns and thus it is included on

the list under C-13. Inclusion of the provision on the list has not been discussed with the Canada-Newfoundland Board. See items # 24 and # 119 for comparable provisions under Acts covering activities in other parts of Canada.

(20) Subsection 155(1) of the Canada-Newfoundland Atlantic Accord Implementation Act[9]

Chief Conservation Officer may order that all operations giving rise to waste cease.

Background: such projects may generate environmental concerns, so the provision is listed under C-13. Its inclusion has not been discussed with the Canada-Newfoundland Board. See items #25 and # 120 for comparable provisions under Acts covering activities in other parts of Canada.

(21) Subsection 155(1) of the Canada-Newfoundland Atlantic Accord Implementation Act[9]

Committee may order certain measures to be taken where waste is occurring in the recovery of petroleum.

Background: projects occurring under this provision may raise environmental concerns, so it is listed under C-13. Inclusion of the provision has not been discussed with the Board. See items # 26 and # 121 for comparable provisions covering similar activities in other parts of Canada.

(22) Subsection 89(1) of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act[10]

Board may issue licence for subsurface storage of petroleum or other substance.

Background: this provision is included since such

activities may warrant an environmental assessment. Inclusion of the provision on the list under C-13 has not been discussed with the Board.

(23) Paragraph 142(1)(b) of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act[10]

Board may authorize each work or activity proposed to be carried on.

Background: same rationale and status as # 22.

(24) Section 158 of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act[10]

Chief Conservation Officer may order commencement, continuation or increase of production of petroleum or the decrease, cessation or suspension of production.

Background: same rationale and status as #s 22 and 23.

(25) Subsection 160(1) of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act[10]

Chief Conservation Officer may order that all operations giving rise to waste cease.

Background:same rationale and status as for items # 22,23, and 24.

(26) Subsection 164(1) of the Canada-Nova Scotia Offshore Petroleum Resource - Accord Implementation Act[10]

Committee may order certain measures to be taken where waste is occurring in the recovery of petroleum.

Background: same rationale and status as for items # 22, 23, 24, and 25.

(27) Subsection 61(1) dealing with project-specific regulations under the Canadian Environmental Protection Act[4.1]

Minister shall recommend site-specific regulations to the G. in C. to deal with the sources of international air pollution.

Background: The Fording coal fired generating station is being assessed under EARP under this provision. It was concluded that site-specific regulations were not needed. There have been no EARP court challenges involving this provision.

(28) Subsection 71(1) of the Canadian Environmental Protection Act[4]

Minister may grant any permit required under the Ocean Dumping provisions of the Act.

Background: any and all ocean dumping permits are currently screened under EARP and class screening under C-13 is desirable. No EARP court cases have dealt with this provision.

(29) Section 11 of the Federal Mobile PCB Treatment and Destruction Regulations under the Canadian Environmental Protection Act[4]

Minister may authorize operation of mobile PCB destruction or treatment system.

Background: this provision could raise environmental concerns, so it is on the list. Example: authorisation for DND to use a mobile incinerator at CFB Goose Bay to destroy PCBs and PCB contaminated materials. There have been no EARP court cases on this provision.

(30) Subsection 12(1) of the Federal Mobile PCB Treatment and Destruction Regulations under the Canadian Environmental Protection Act

Minister may grant permission to conduct a test of a mobile PCB destruction or treatment system.

Background: testing such mobile systems could raise environmental concerns, so it is on the list under C-13. Example: permission was granted to test the VESTA mobile PCB incinerator at the Swan Hills Special Waste Management Facility. EARP court cases involving provision: no.

(31) Subsection 13(2) of the Ozone-Depleting Substances Regulations No. 1 chlorofluorocarbons under the Canadian Environmental Protection Act

Minister shall issue permit to export bulk chlorofluorocarbons in a control period with certain conditions attached.

Background: Bulk exportation of CFCs can raise environmental concerns about ozone depletion which should be assessed under C-13. Examples: permits would indicate the amount being exported, the time period involved, and the country importing the CFCs. Court challenges: no.

(32) Subsection 7(3) of the Ozone-Depleting Substances Regulations No. 2 certain bromofluorocarbons under the Canadian Environmental Protection Act

Minister shall issue permit to export bulk bromofluorocarbons with certain conditions attached.

Background: environmental issues are raised when BFCs are exported, so the provision is on the list. Example: specific amounts to be exported, where, and over what period of time are recorded in export permits. Court

challenges: no.

(33) Subsection 43(1) of the Canadian Petroleum Resources Act[4]

Minister may issue licence for subsurface storage of petroleum or other substance.

Background: provision included on list under C-13 since such projects could raise environmental concerns. No recent examples of projects nor has the provision been contested in EARP court cases.

(34) Subsection 14(1) of the Heritage Canal Regulations under the Department of Transport Act[17]

Superintendent may issue permit for dredge or fill operations.

Background: projects permitted under this provision might raise environmental concerns, thus it is on the draft list under C-13. Further discussions with Transport Canada are required to obtain examples of projects permitted by the provision.

(35) Subsection 7(1) of the Dominion Water Power Act[3]

Authorization of Minister required to use, enter (etc.) lands required for water project.

Background: this provision is used to authorize water works projects such as power stations and transmission lines. Since such projects can generate environmental concerns, it is included on the list of statutory and regulatory provisions under C-13. There have not been any EARP cases regarding this provision.

(36) Section 9 of the Dominion Water Power Act[3,19]

G.in C. may grant necessary authorizations to bring

about the joint development of water-power.

Background: such projects can raise environmental concerns, thus it is on the list of statutory and regulatory provisions under C-13. No specific examples of projects involving this provision are available. There have not been any EARP cases regarding this provision.

(37) **Subsection 8(1) of the Dominion Water Power Regulations under the Dominion Water Power Act[3]**

Minister may issue interim licence for the carrying out of proposed water development.

Background: same rationale and particulars as provided in item # 36.

(38) **Subsection 69(3) of the Dominion Water Power Regulations under the Dominion Water Power Act[3,6]**

Minister may exempt developer of small water-power facilities from complying with the provisions of the regulations and may issue a special licence subject to certain conditions.

Background: same rationale and particulars as provided in item # 36. It should be noted that Parks Canada uses this provision for National Parks and Heritage Canals projects.

(39) **Subsection 7(a) of the Explosives Act[4]**

Minister may issue licences for factories.

Background: licensing such factories will raise environmental issues which should be assessed, so it is on the list under C-13. The provision actually encompasses licences for factories and magazines - the latter does not generate environmental concerns and

should not be included on the list. A typical project requiring approval under this provision would involve a satellite watergel/emulsion blasting explosives factory located at or near mining projects. There have not been any EARP court cases involving the explosives industry.

(40) Section 33 of the Explosives Regulations under the Explosives Act'

Minister may issue permit to manufacture new explosives for experimental or testing purposes.

Background: such projects could raise environmental issues, so the provision is listed under C-13. No specific examples available. No EARP cases involving this provision.

(41) Subsection 35(2) relating to ministerial authorizations under the Fisheries Act"

Minister may authorize where work may be carried on that may cause the alteration, disruption or destruction of fish habitat.

Background: projects approved under this provision allow the alteration, disruption or destruction of fish habitat, and thus should be listed under C-13 so that an environmental assessment can be conducted. Examples of projects and EARP court cases involving the provision are Rafferty-Alameda, the Oldman River Dam, and the Point Aconi coal-fired generating station in Nova Scotia.

(42) Subsection 37(2) of the Fisheries Act"

Minister may, with approval of G. in C., require modifications to, restrictions on, or closing of work that could be a harmful alteration of fish habitat.

Background: same rationale and examples as provided for

Subsection 35(2) of the Fisheries Act (see item # 41 immediately above).

(43) **Paragraph 3(1)(e) of the Forestry Development and Research Act**[12]

The Minister may, on request, assume responsibility for the protection and management of any forests on lands administered by a department.

Background: Given potential environmental concerns, added to 5(d) list. Forestry Canada has assumed responsibility for forest fire protection and forest management on Canadian Forces Base Gagetown. There have not been any EARP-related cases on this provision. The name of the Act has been changed to the Forestry Act. Further research is required to determine whether such projects always involve a federal authority as a proponent. If this is the case, then the provision should be deleted from the list.

(44) **Subsection 4(b) of the Forestry Development and Research Act**[12,19]

G. in C. may establish lands provided by the provinces or any person as a Forest Experimental Area.

Background: same rationale as for #43. A Forest Experimental Area has been established at Acadia, New Brunswick. No known EARP cases involving the provision. See note in #43 for change in name of Act.

(45) **Subsection 3(1) of the Forestry Timber Regulations under the Forestry Development and Research Act**[12]

Permit or agreement required to cut in or remove timber from a Forest Experimental Area.

Background: Citation is wrong since permits are issued under Section 4 of the regulations rather than

subsection 3(1). Same rationale for inclusion as noted in # 43 and the Act is now the Forestry Act. Permits to remove timber from the Acadia Forest Experimental Area have been issued under Section 4. No EARP cases.

(46) Subsection 9(1) of the Forestry Timber Regulations under the Forestry Development and Research Act[12]

Forest Officer may enter into agreement for the cutting or removal of trees from a Forest Experimental Area.

Background: Same rationale for inclusion as listed in # 43. Act now the Forestry Act. Permits may also be issued under subsection 9(2). No EARP cases on provisions.

(47) Section 121 of the Animal Disease and Protection Regulations under the Health of Animals Act[2]

Permit from Minister required to import a veterinary biologic into Canada. Form and conditions set out under section 160.

Background: Agriculture Canada wants to revisit including this provision on the list once proposed amendments to C-13 have been tabled.

(48) Section 123 of the Animal Disease and Protection Regulations under the Health of Animals Act[2]

Establishment licence from Minister required to prepare, pack etc. or test a veterinary biologic. Form and conditions set out under section 160.

Background: Agriculture Canada wants to revisit including this provision on the list once the proposed amendments to C-13 have been tabled.

(49) **Section 124 of the Animal Disease and Protection Regulations under the Health of Animals Act[2]**

Product licence from Minister required to manufacture a veterinary biologic. Form and conditions set out under section 160.

Background: Agriculture Canada wants to revisit including this provision on the C-13 list once proposed amendments to C-13 have been tabled.

(50) **Section 160 of the Animal Disease and Protection Regulations under the Health of Animals Act[2]**

Form and conditions for veterinary biologics set out.

Background: included by error, should be deleted from list.

(51) **Paragraph 9(1)(b)(iii) (A) of the Immigration Regulations under the Immigration Act[7]**

Minister and Province of investment have to approve the business venture of an investor wishing to come to Canada.

Background: Projects proposed under this provision could have environmental effects, so it is included on the list under C-13. To provide specific examples may risk divulging confidential investor information. Environmental assessments of projects coming under this provision have been conducted under the current Guidelines Order. There have not been any EARP court cases involving this provision.

(52) **Subsection 18(2) of the Indian Act[3]**

Minister may authorize the use of lands in a reserve for certain purposes.

Background: Projects authorized under this provision would include construction of schools, etc. Since such projects could raise environmental concerns, it is on the list under C-13. No EARP cases have dealt with the provision.

(53) **Subsection 19(c) of the Indian Act[3]**

The Minister may determine the location and direct construction of roads and other land-use projects in a reserve.

Background: since the types of projects described above can generate environmental concerns, the provision is included on the list under C-13. No Earp cases have dealt with the provision.

(54) **Subsection 28(2) of the Indian Act[3]**

Minister may issue permit to occupy or use a reserve.

Background: projects permitted under the provision include using the reserve land for agricultural purposes. Such activities could generate environmental concerns and thus the provision is included on the list under C-13. No EARP cases have dealt with the provision.

(55) **Section 93 of the Indian Act[3]**

Authorization from Minister required to remove minerals, stone, trees etc. from reserve.

Background: such projects could raise environmental concerns, thus the provision is on the draft list under C-13. Typically the permit is only issued if the band consents to the project as well. No EARP cases have dealt with the provision.

(56) **Subsection 5(2) of the Indian Mining Regulations under**

the Indian Act[3]

Division Chief may issue permit or lease with respect to mineral rights.

Background: since such projects can raise environmental concerns, the provision is listed in the draft regulation under C-13. No EARP court cases have dealt with the provision.

(57) **Subsection 6(1) of the Indian Mining Regulations under the Indian Act[3]**

Division Chief may, with consent of band council, issue a permit or lease with respect to minerals.

Background: since such projects may warrant an environmental assessment, the provision is listed in the draft regulation under C-13. There have not been any EARP court cases involving this provision.

(58) **Section 5 of the Indian Reserve Waste Disposal Regulations under the Indian Act[3]**

Minister, or band council if authorized by Minister, may issue a permit to operate garbage dump, use reserve land as a waste disposal site, or burn waste on reserve land.

Background: such projects will raise environmental concerns, so the provision appears on the draft list under C-13. No EARP cases have dealt with this provision.

(59) **Subsection 5(1) of the Indian Timber Regulations under the Indian Act[3]**

Superintendent may, with consent of band council, issue permit to cut timber to member(s) of band.

Background: such projects merit environmental assessments, thus the provision is listed under C-13. No EARP cases have involved this provision.

(60) Subsection 5(2) of the Indian Oil and Gas Regulations under the Indian Oil and Gas Act[3]

Manager may, with approval of band council, grant an exploratory licence.

Background: such exploratory activities may warrant an environmental assessment, thus the provision is listed under C-13. No EARP cases have dealt with the provision.

(61) Subsection 7(1) of the Indian Oil and Gas Regulations under the Indian Oil and Gas Act[3]

Manager may, with approval of band council, dispose of available oil and gas rights by permit or lease.

Background: Such activities could merit an environmental assessment, thus the provision is listed under C-13. No EARP cases have dealt with this provision.

(62) Subsection 10(1) of the International River Improvements Regulations under the International River Improvements Act[4]

Minister may issue licence for construction, operation of an international river improvement project.

Background: projects approved under this provision may raise environmental concerns, so it is on the list under C-13. Example: the Rafferty Dam. Court Cases: yes, Rafferty-Alameda.

(63) Subsection 27(3) of the Meat Inspection Regulations, 1990, under the Meat Inspection Act[3]

Director shall register establishment if conditions set out in regulations are met.

Background: This provision may not entail decision-making, as such it is a candidate for deletion from the C-13 list. Agriculture Canada wishes to revisit including the provision once the proposed amendments to C-13 have been tabled.

(64) **Subsection 4(1) of the Migratory Birds Regulations under the Migratory Birds Convention Act'**

Minister may issue any permit referred to in Schedule II.

Background: granting an aviculture permit may raise environmental concerns, so this provision is listed under C-13. Court challenges: no.

(65) **Section 33 of the Migratory Birds Regulations under the Migratory Birds Convention Act'**

Director's consent required to introduce foreign species of migratory bird.

Background: such projects could raise environmental concerns which should be assessed, so it is on the list under C-13. Example: apparent from the description of the provision. Court challenges: no.

(66) **Section 36 of the Migratory Birds Regulations under the Migratory Birds Convention Act'**

Minister may issue special permit to kill or capture migratory birds or collect carcasses, eggs or nests of migratory birds.

Background: such projects raise environmental concerns, so it is on the list under C-13. Example: removal of

nuisance birds in urban areas. Court challenges: no.

(67) Subsection 9(1) of the Migratory Bird Sanctuary Regulations under the Migratory Birds Convention Act[14]

Minister may issue any permit referred to in these regulations.

Background: Projects such as wildlife research in a bird sanctuary merit an environmental assessment, so the provision is listed under C-13. Example: given above. Court Challenges: no.

(68) Subsection 5(1) of the National Archives of Canada Act[13]

Consent of Archivist required to destroy or dispose of records of government institutions and ministerial records.

Background: this provision should be deleted from the list since it only involves projects where a federal authority is a proponent. Such projects are already covered by subsection 5(a) of C-13.

(69) Paragraph 5(1)(c)(vii) of the National Research Council Act[15]

The Council may undertake and assist research the object of which is to improve conditions in agriculture.

Further research has revealed that these projects are carried out by the Council itself. As such, this provision should be deleted from the list.

(70) Paragraph 5(1)(k) of the National Research Council Act[15]

Council may promote or undertake work of an

experimental nature in relation to listed matters

This provision should be deleted from the list for the same reason that # 69 should be removed.

(71) **Subsection 46(1) of the National Energy Board Act[14]**

Board may direct a company to divert or relocate its pipeline.

Background: provision listed under C-13 since it involves projects which could have environmental effects. An example of such a project would be where the Board requests that a company relocate a portion of its pipeline to facilitate the relocation of a highway. This provision has not been raised in EARP court cases.

(72) **Section 52 of the National Energy Board Act[14,19]**

Board may, with approval of G. in C., issue certificate of public convenience and necessity in respect of pipeline.

Background: since projects approved under this provision could have environmental effects, it is listed under C-13. Westcoast Energy Inc's application for its Adsett pipeline project in north-eastern British Columbia. No EARP cases have dealt with this provision.

(73) **Subsection 58(1) of the National Energy Board Act[14]**

Board may make exempting orders respecting pipelines and other works related to pipelines.

Background: since such projects will have environmental effects, this provision should be listed under C-13. The provision was used to exempt 21 km of TransCanada Pipeline Ltd.'s pipeline loop from the general

provisions of the National Energy Board Act. No EARP cases have dealt with this provision.

(74) Subsection 58.11(1) of the National Energy Board Act[14]

Board shall issue permit authorizing construction and operation of an international power line.

Background: this provision should be deleted from the list since there is no discretionary power involved in this subsection.

(75) Subsection 58.16(1) of the National Energy Board Act[14,19]

Board may, subject to approval of G. in C. issue certificate of public convenience and necessity in respect of international or interprovincial power line.

Background: since projects approved under this subsection could have environmental effects, it is listed under C-13. Hydro-Quebec's 450kV line between Des Cantons(near Sherbrooke) and the international boundary near Stanhope Quebec is an example of a project approved under the provision. No EARP cases have raised this provision.

(76) Subsection 58.32(1) of the National Energy Board Act[14]

Board may direct a company to divert or relocate an international or interprovincial power line.

Background: this provision is listed under C-13 since projects approved under it could have environmental effects. To date, the provision has not been used nor has it been contested in EARP court cases.

(77) Subsection 58.34(1) of the National Energy Board Act[14]

Leave required from Board to abandon the operation of an international or interprovincial power line.

Background: since the provision could trigger projects with adverse environmental effects, it is listed under C-13. To date, the provision has not been used nor has it been challenged in EARP court cases.

(78) Paragraph 74(1)(d) of the National Energy Board Act"

Leave of Board required to abandon the operation of a pipeline.

Background: such projects could have environmental effects, so the provision is listed under C-13. Trans Mountain Pipeline Company's abandonment and removal of four pump stations is an example of a project falling under this provision. No recorded court challenges of this provision.

(79) Subsection 117(1) of the National Energy Board Act"

Board may issue licences for the exportation or importation of oil or gas.

Background: since such projects could have environmental effects, the provision is listed under C-13. Such projects may lend themselves to class screenings under C-13. The provision was evoked in Dartmouth Power Associates Limited's application for a twenty year export licence of natural gas to Massachusetts. There have been no EARP cases concerning this provision.

(80) Subsection 119.03(1) of the National Energy Board Act"

Board shall issue permit authorizing the exportation of electricity.

Background: since there is no discretionary power flowing from this provision, it should be deleted from the list.

(81) **Subsection 119.08(1) of the National Energy Board Act**[14,19]

Board may, subject to approval of G. in C., issue a licence for the exportation of electricity.

Background: this provision has been used by the Board to assess the environmental effects of these exports. The recent Federal Court of Appeal decision involving Hydro-Quebec suggests that the provision gives limited scope to conduct such assessments. If further analysis confirms this decision, then perhaps the provision should be deleted from the list.

(82) **Subsection 125(1) of the National Energy Board Act**[14]

Board may issue a licence permitting the movement of designated oil and gas out of the designated province or area.

Background: this provision has never been brought into force and it is likely that if it were activated and used it would only be used in emergency circumstances. As such, this provision should be deleted from the list under C-13.

(83) **Subsection 5(7) of the National Parks Act**[4]

Minister authorize certain designated classes of persons to engage in traditional renewable resource harvesting activities in certain areas.

Background: given the potential environmental concerns, it is on the list under C-13. No specific examples available. No known EARP cases dealing with the provision.

(84) **Paragraph 6(2)(c) of the National Parks Act**[4,19]

The G. in C. may authorize the granting of licences for occupation of lands within a park for the installation

and operation of radio and television repeater stations etc.

Background: potential environmental concerns exist, so provision placed on list under C-13. No specific examples available. No known EARP cases dealing with the provision.

(85) Subsection 8.3(3) of the National Parks Act[6,1]

G. in C. may designate a portion of a designated area of Banff National Park as a commercial ski area.

Background: given potential environmental concerns, the provision is on the list under C-13. No specific examples available. No known EARP cases dealing with the provision.

(86) Subsection 5(10) of the National Parks Act[4]

Minister may authorize activities to be carried on in a wilderness area for certain designated purposes.

Background: given potential environmental concerns, the provision is listed under C-13. No specific examples given. No known EARP cases involving this provision.

(87) Subsection 3(2) of the National Historic Parks General Regulations under the National Parks Act[4]

Director may issue permit to remove historical resources from a park for certain purposes.

Background: since potential environmental concerns associated with such projects, the provision is listed under C-13. No specific examples available. No known EARP court cases involving this provision.

(88) Subsection 28(2) of the National Historic Parks General Regulations under the National Parks Act

Superintendent may issue permit for explosives in a park.

Background: projects approved under this provision could generate environmental concerns, so it is listed under C-13. No specific examples available. No known EARP court cases challenging the use of this provision.

(89) Subsection 5(1) of the National Parks Regulations (Building) under the National Parks Act

Building permit required from Superintendent before construction work in a park can be carried out.

Background: projects approved under the provision could raise environmental concerns, so the provision is listed under C-13. No specific examples available. No EARP court cases involving the provision.

(90) Subsection 13(1) of the National Parks Regulations (Building) under the National Parks Act

Appliance installation permit required from Superintendent to install commercial fuel-burning appliance in a park.

Background: this provision is on the list because it may cover projects with environmental impacts. No specific examples available. No EARP court cases challenging the use of the provision.

(91) Subsection 4(1) of the National Parks Regulations (Business) under the National Parks Act

Superintendent may issue licence to carry on a business

in a park.

Background: provision listed under C-13 because it could raise environmental concerns. No specific examples available. No known EARP court cases contesting the use of this provision.

(92) **Paragraph 19(1)(a) of the National Parks Regulations (Cemetery) under the National Parks Act'**

Authorization from Superintendent required before work can be carried out in a park cemetery.

Background: projects authorized under the provision could involve environmental issues, so it is on the C-13 list of statutory and regulatory provisions. No specific examples available. No EARP court challenges.

(93) **Subsection 7(1) of the National Parks Regulations (Cottages) under the National Parks Act'**

Development permit from Superintendent required before work on cottage lot in a park can be carried out.

Background: such projects could raise environmental concerns, so it is listed under C-13. No specific examples available. No EARP court challenges of provision.

(94) **Subsection 4(3) of the National Parks Regulations (Fire Protection) under the National Parks Act'**

Superintendent may issue permit to start and maintain a fire in a park.

Background: such projects would raise environmental concerns, thus it is listed under C-13. No specific examples available. No EARP court challenges of provision.

(95) **Subsection 5(2) of the National Parks Regulations (Fire Protection) under the National Parks Act**

Superintendent may issue permit for possession of more than 250 litres of fuel in a park.

Background: before issuing a permit, an environmental assessment should be done. This is why it is on the list under C-13. No specific examples available. No EARP cases involving this provision.

(96) **Subsection 5(2) of the National Parks Regulations (Garbage) the National Parks Act**

Permit required from Superintendent before solid or liquid wastes can be delivered to a posted disposal area in a park.

Background: as the description of the provision reveals, such projects entail environmental implications. Hence it is listed under C-13. No specific examples available. No EARP cases on this provision.

(97) **Subsection 4(1) of the National Parks Regulations (Timber) under the National Parks Act**

Superintendent may issue permit to cut such timber as may be necessary for protection and management of forests in a park.

Background: as the description of the provision indicates, there will be environmental effects associated with such projects. This is why it is on the list under C-13. No specific examples of projects approved under this provision are available. No EARP cases have challenged this provision.

(98) **Subsection 15(1) of the National Parks Regulations (Wildlife) under the National Parks Act**

Director may authorize taking, killing, sale or introduction of wildlife into a park for certain purposes.

Background: since such projects should be assessed, the provision is listed under C-13. No specific examples are available. No EARP court challenges of provision.

(99) **Subsection 47(2) of the Wood Buffalo National Park Game Regulations under the National Parks Act[6]**

Minister may authorize use of poison for taking or killing of game for scientific purposes.

Background: since projects authorized under this provision should be assessed for their environmental effects, it is listed under C-13. No concrete examples of projects under the provision are available. No EARP court cases have contested the use of this provision.

(100) **Paragraph 56(1)(a) of the Wood Buffalo National Park Game Regulations under the National Parks Act[6]**

Director may authorize taking or killing of game for scientific purposes.

Background: since such projects could have environmental effects, the provision is listed under C-13. No specific examples of projects are available. No EARP court cases have dealt with the provision.

(101) **Paragraph 56(1)(b) of the Wood Buffalo National Park Game Regulations under the National Parks Act[6]**

Director may authorize taking or destruction of game for game management.

Background: such projects should be assessed, so the provision is listed under C-13. No examples of specific projects are available. No EARP court cases have

examined this provision.

(102) Subsection 44(1) of the National Transportation Act[16]

Agency may set terms and conditions of works where they are ordered.

Background: this provision can be deleted since it relates to the NTA's general powers. Project approvals would occur under more specific powers cited in this list.

(103) Section 145 of the National Transportation Act[16]

Agency may require rail traffic facilities to be built (common carrier obligations).

Background: such projects could have environmental effects, so the provision is listed under C-13. The description of the provision suggests the types of projects which would be approved under it. No EARP cases have raised this provision.

(104) Paragraph 147(4)(a) of the National Transportation Act[16]

Agency may order railway company to fulfil its common carrier obligations e.g. may require company to build facilities.

Background: since projects under this provision may have environmental effects, it is listed under C-13. The description of the provision indicates the types of projects which would be involved. There have been no EARP cases dealing with the provision.

(105) Paragraph 147(4)(b) of the National Transportation Act[16]

Agency may set terms and conditions under which railway company must fulfil its obligation under (a).

Background: same rationale and experience as for # 104 immediately above.

(106) Subsection 149(3) of the National Transportation Act[14,19]

G.in C. may order the joint use of tracks and such arrangements as to facilitate joint track usage.

Background: same rationale and experience as noted in #104.

(107) Subsection 150(1) of the National Transportation Act[14]

Agency may order track connections (federal railways).

Background: since such projects could have environmental effects, the provision should be listed under C-13. The description of the provision indicates the kinds of projects taking place under it. There have not been any EARP cases involving this provision.

(108) Subsection 151(2) of the National Transportation Act[14]

Agency may order track connections (federal/provincial railways).

Background: same background information as for # 107.

(109) Subsection 232(1) of the National Transportation Act[14]

Minister may grant permit to construct and operate a commodity pipeline.

Background: since such projects could have environmental effects, the provision should be listed under C-13. The kinds of projects allowed under the provision are characterized in the description of it. This provision involves a Ministerial power and thus it perhaps should be reported under Transport Canada rather than the NTA. There have not been any EARP court

cases involving this provision. The NTA has indicated that consideration be given to adding section 237 of the National Transportation Act to the list. This section deals with making recommendations about commodity pipelines - the stage at which the NTA currently HARPs proposals. Inclusion of this provision hinges on the question of whether making recommendations qualifies as a decision making activity for the purposes of C-13.

(110) Subsection 243(1) of the National Transportation Act"

Approval of plan for commodity pipeline by Agency.

Background:related to # 109 and involves the same background facts.

(111) Paragraph 5(1)(a) of the Navigable Waters Protection Act"

Ministerial approval of work plans required for works dealing with navigable waters.

Background: Projects approved under this provision include construction of bridges, booms, or dams. Since such projects could raise environmental concerns, it is on the list of statutory and regulatory provisions under C-13. This provision was at issue in the Oldman River Dam case.

(112) Subsection 10(2) of the Navigable Waters Protection Act"

Ministerial approval of work plans required for alteration to a work dealing with navigable waters.

Background: projects involving the alteration of existing works are approved under this subsection. Since such projects could raise environmental concerns, it is on the draft list of statutory and regulatory provisions under C-13. The Kemano (Alcan) project is an

example of works approved under the subsection. This provision and that project were challenged in the Kemano EARP case.

(113) Section 25 of the Navigable Waters Protection Act[17]

Minister may designate dumping places for stone, gravel etc. in navigable waters.

Background: Transport Canada notes that this provision should be deleted from the list since projects proceeding under it would involve a federal authority as a proponent. Subsection 5(a) of C-13 would cover such projects, so it is not appropriate to list it under Subsection 5(d) (ie: on this list) of the proposed Act.There have not been any EARP cases involving the provision.

(114) Subsection 11(1) of the Northern Inland Waters Act[3]

Board may, with approval of Minister, issue licence to use waters for a particular undertaking.

Background: Included on the list because projects approved under the provision could raise environmental concerns. Water licences are issued for water use and waste disposal for hardrock mining projects and municipal sewage systems. There have been no EARP cases involving this provision.

(115) Subsection 14(a) of the Northern Inland Waters Act[3]

Board may, with approval of Minister, renew licence under same or different terms and conditions.

Background: Included on the list because projects approved under the provision could raise environmental concerns. There have been no EARP court cases on this provision.

(116) Subsection 14(b) of the Northern Inland Waters Act[3]

Board may, with approval of Minister, amend the terms and conditions of licence.

Background: same rationale and particulars as under # 114.

(117) Section 5 of the Northwest Territories Archaeological Sites Regulations under the Northwest Territories Act[3]

Minister may issue permit to conduct archaeological investigations and to remove or collect archaeological specimens.

Background: Projects permitted under this provision could well raise environmental concerns, so it is included on the list of statutory and regulatory provisions. The description of the provision supplied above reveals the types of projects covered by it. There have been no EARP cases involving this provision.

(118) Paragraph 5(1)(b) of the Oil and Gas Production and Conservation Act[4]

Minister may authorize each proposed work or activity.

Background: projects approved under this provision may warrant an environmental assessment, thus it is on the list. Seismic programs are examples of projects covered by this provision. COGLA believes that further analysis is desirable to ensure that items # 33, and 119 to 125 inclusive need be listed since an authorization under paragraph 5(1)(b) may be required in these cases as well.

(119) Section 17 of the Oil and Gas Production and Conservation Act[4]

Chief Conservation Officer may order commencement or increase in production of oil or gas.

Background: see comments under item # 118.

(120) **Section 19 of the Oil and Gas Production and Conservation Act**

Chief Conservation Officer may order the halt of all operations giving rise to waste.

Background: see comments under # 118.

(121) **Subsection 23(1) of the Oil and Gas Production and Conservation Act**

Oil and Gas Committee may order certain measures where waste is occurring in the recovery of oil or gas.

Background: see comments under # 118.

(122) **Section 11 of the Canada Oil and Gas Drilling Regulations under the Oil and Gas Production and Conservation Act**

Approval of Chief of Drilling Program.

Background: see comments under # 118.

(123) **Subsection 137(b) of the Canada Oil and Gas Drilling Regulations under the Oil and Gas Production and Conservation Act**

Waste material has to be disposed of in a manner approved by the Chief.

Background: see comments under item # 118.

(124) **Subsection 139(a) of the Canada Oil and Gas Drilling**

Regulations under the Oil and Gas Production and Conservation Act[4]

Sewage etc. has to be disposed of in a manner approved by the Chief.

Background: see comments under item # 118.

(125) **Subsection 139(c) of the Canada Oil and Gas Drilling Regulations under the Oil and Gas Production and Conservation Act[4]**

Spent or excess acid has to be disposed of in a manner approved by the Chief.

Background: see comments under item # 118.

(126) **Subsection 13(1) of the Pest Control Product Regulations under the Pest Control Products Act[3]**

Minister shall register or amend registration of control products if conditions are met.

Background: This provision may not involve decision-making powers. As such, it is a candidate for deletion from the list under C-13. Agriculture Canada wants to revisit including this provision once the proposed amendments to C-13 have been tabled.

(127) **Subsection 4(1) of the Plant Quarantine Regulations under the Plant Protection Act[2]**

Minister may issue permit for admission into Canada of any plant or other matter that is infested with a pest or that constitutes a biological obstacle to the control of a pest.

Background: Agriculture Canada wants to revisit including this provision on the list once the proposed

amendments to C-13 have been tabled.

(128) Section 4 of the Public Lands Grants Act[18,19]

Authorize sale/lease of public lands.

Background: since authorizing such transfers may raise environmental concerns, it is included on the list under C-13. No specific examples are available. No known EARP court cases have dealt with the provision.

(129) Section 3 of the Public Lands Leasing and Licensing Regulations under the Public Lands Grants Act[18]

Minister may enter into lease or grant licence to use or occupy public lands that are not required for public purposes.

Background: same particulars as for # 128.

(130) Paragraph 5(1)(f) of the Radiocommunication Act[4]

Minister may approve each site on which radio apparatus may be located and may approve erection of all towers, masts, etc.

Background: this paragraph is included on the list because projects approved under it could well pose environmental concerns such as the levels of non-ionising radiation of a radio transmitter which may be a threat to wildlife or humans. There have been no EARP cases involving this provision.

(131) Section 7 of the Railway Relocation and Crossing Act[16]

Agency may order railway company to cease to operate over a line within a transportation study area and to order removal of tracks, buildings, etc. so as to carry out transportation plan.

Background: such projects may raise environmental concerns, thus listed under C-13. There have not been any EARP court cases on this provision.

(132) Subsection 8(1) of the Railway Relocation and Crossing Act[16]

Agency may make certain orders so that transportation plan may be carried into effect.

Background: assessments of such projects desirable, thus on list under C-13. No EARP cases reported re provision.

(133) Subsection 112(3) of the Railway Act[16]

Agency may approve map and location of railway.

Background: Projects warrant assessment, thus on C-13 list. No EARP court cases.

(134) Subsection 123(1) of the Railway Act[16]

Approval of Agency required for deviation, change or alteration in Rail line.

Background: Projects may merit assessment, so on list under C-13. No EARP court cases re provision.

(135) Subsection 127(1) of the Railway Act[16]

Agency may authorize the construction of a branch line.

Background: such projects should be covered by C-13. Provision not challenged in EARP court cases.

(136) Section 131 of the Railway Act[16]

Agency may permit use of spur by another industry and

may permit construction work where necessary.

Background: such projects should be covered by C-13. No EARP cases dealing with provision.

(137) **Subsection 145(1) of the Railway Act[16]**

Agency may grant authority to railway company to take additional lands.

Background: projects merit assessment, thus on C-13 list. No EARP cases.

(138) **Subsection 147(1) of the Railway Act[16]**

Leave to obtain lands for access to materials required for construction of rail line.

Background: may warrant inclusion on C-13 list. No EARP cases. NTA wants to revisit with a view to deletion. Discussions ongoing.

(139) **Subsection 196(6) of the Railway Act[16]**

Agency may require railway company to construct passageway for public alongside the track.

Background: merits assessment, so on C-13 list. No court challenges re EARP.

(140) **Paragraph 197(3)(a) of the Railway Act[16]**

Leave from Agency required to cross or join railway tracks.

Background: such projects deserve assessment, so on C-13 list. No EARP cases.

(141) **Subsection 201(1) of the Railway Act[16]**

Application for railway crossing.

Background: projects merit assessment. Cited subsection incorrect, should be 201(2) which is the real decision making subsection. No EARP cases.

(142) **Subsection 202(1) of the Railway Act[16]**

Agency may make orders for the convenience of the public or regarding railway crossings.

Background: merits listing under C-13. No EARP cases.

(143) **Subsection 212(1) of the Railway Act[16]**

Agency may order or permit railway company to construct drainage or lay pipes.

Background: merits listing under C-13. No EARP cases.

(144) **Subsection 214(3) of the Railway Act[16]**

Agency may authorize the construction of necessary works to cross over or under a railway.

Background: merits C-13 listing. No EARP cases.

(145) **Section 216 of the Railway Act[16]**

Agency may order railway company to construct farm crossing.

Background: warrants C-13 listing. No EARP cases.

(146) **Subsection 230(1) of the Railway Act[16]**

Agency may make orders regarding public comfort in railway operations.

Background: provision deals with safety issues, not

clear that environmental factors neglected nor salient. As such, WTA requests revisiting provision with a view to deletion. Discussions to this end are underway.

(147) Subsection 326(3) of the Railway Act[16]

Leave required from Agency for the placing of wires across railway line.

Background: projects may merit inclusion under C-13. Could be marginal provision. Provision not tested in EARP cases.

(148) Subsection 329(3) of the Railway Act[16]

Agency may order lines and wires to be placed along highways or public places.

Background: projects may warrant C-13 inclusion. Could be marginal. No EARP cases.

(149) Paragraph 330(1)(a) of the Railway Act[16]

Agency may order telecommunications lines to be placed underground.

Background: may merit C-13 inclusion. No EARP cases.

(150) Paragraph 330(1)(b) of the Railway Act[16]

Agency may order the extension or change in the location of any telecommunications lines.

Background: may merit C-13 inclusion. No EARP cases.

(151) Subsection 330(2) of the Railway Act[16]

Agency, provincial commissions and public utilities may order lines to be placed underground.

Background: may deserve C-13 inclusion. No EARP cases.

(152) Subsection 383(1) of the Railway Act[16]

Removal of weeds, etc. by municipal officers permitted.

Background: Included by error, should be deleted. No EARP cases.

(153) Subsection 8(1) of the Railway Safety Act[17]

This subsection requires that notice of proposed railway work be given before the work begins.

Background: Recent discussions with Transport Canada indicate that this should [redacted] be deleted from the list since the actual decision-making occurs under (#154).

(154) Subsection 10(1) of the Railway Safety Act[17]

Minister's approval required for certain railway works.

Background: such projects could generate environmental concerns, thus the provision may warrant inclusion on the list under C-13. An example of a project approved under this provision could involve gas lines which a company plans to lay near a railway bridge. No EARP cases.

(155) Section 71.6(a) of the Regulations for the Transportation of Dangerous Commodities by Rail under the Railway Safety Act[17]

The Director of Operations may issue special permits granting exemptions from these regulations.

Background: Recent discussions with Transport Canada have revealed that this provision should be deleted from the list since it: is slated for repeal; may only

be used in emergency situations; and essentially provides for equivalent levels of safety.

(156) Section 6 of the Liquified Petroleum Gases Bulk Storage Regulations under the Railway Safety Act[17]

Leave of Agency required to construct storage facilities for liquified petroleum gases.

Background: Apparently this provision is also slated for repeal. As such, further discussions with Transport Canada are required to assess whether to delete the provision from the list.

(157) Subsection 22(b) of the Telegraphs Act[5,19]

G. in C. approval of plan site and location of telegraph lines required.

Background: this subsection has not been used in decades and is slated to be repealed when the new telecommunications legislation is enacted within the next year. This subsection is thus a candidate for deletion from the list of provisions.

(158) Subsection 22(c) of the Telegraphs Act[5,19]

G. in C. may impose conditions regarding telegraph line construction.

Background: same status as # 157.

(159) Section 41 of the Telegraphs Act[5]

Licence required to construct or operate a submarine cable line.

Background: even though this is an infrequently used provision, projects such as Teleglobe's planned external submarine cables could raise environmental

concerns. This is why it is on the list of statutory and regulatory provisions. There have been no EARP cases regarding this provision.

(160) Section 8 of the Territorial Lands Act[3,19]

G. in C. may authorize lease or other disposition of territorial land.

Background: Since projects involving the use of territorial lands could well raise environmental concerns, it is included on the list under C-13. There have not been any EARP cases on this provision.

(161) Subsection 24(3) of the Canada Mining Regulations under the Territorial Lands Act[3]

Mining recorder shall record claim if requirements have been satisfied.

Background: Projects enabled under this provision would include mining operations. Since such projects could raise environmental concerns, the provision is on the list under C-13. There have been no EARP cases on this provision.

(162) Subsection 29(10) of the Canada Mining Regulations under the Territorial Lands Act[3]

Chief may issue permit to prospect for minerals.

Background: Since prospecting for minerals could raise environmental concerns, this provision is included on the list under C-13. There have not been any EARP cases involving this provision.

(163) Section 14 of the Territorial Coal Regulations under the Territorial Lands Act[3]

Minister may issue lease of a location for mining coal.

Background: coal mining could raise environmental concerns, so the provision is listed under C-13. There have been no EARP cases involving the provision.

(164) Section 24 of the Territorial Coal Regulations under the Territorial Lands Act

Recorder shall issue permit to mine for coal if requirements have been met.

Background: same particulars as under # 163.

(165) Section 35 of the Territorial Coal Regulations under the Territorial Lands Act

Chief may issue licence to explore for coal.

Background: Since coal exploration activities could raise environmental concerns, the provision is listed under C-13. There have been no EARP cases on the provision.

(166) Section 3 of the Territorial Dredging Regulations under the Territorial Lands Act

Minister may issue lease to dredge for minerals in a submerged river bed.

Background: as the description above indicates, such projects could raise environmental concerns. This is why the provision is listed under C-13. There have been no EARP cases on the provision.

(167) Subsection 15(1) of the Territorial Dredging Regulations under the Territorial Lands Act

Timber agent may grant permit to cut timber necessary for dredging operation.

Background: Such projects can raise environmental

concerns, so it is listed under C-13. There have not been any EARP cases involving the provision.

(168) Paragraph 25(1)(a) of the Territorial Land Use Regulations under the Territorial Lands Act

Engineer shall issue Class A permit subject to terms and conditions set out in regulations.

Background: These permits enable projects such as the establishment of campsites, or of a fuel storage facility, to proceed. Since these projects could raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving the provision. DIAND reports that since related permits are issued under other subsections of Section 25, that Section, rather than only paragraph 25(1)(a) should be listed.

(169) Subsection 27(a) of the Territorial Land Use Regulations under the Territorial Lands Act

Engineer shall issue Class B permit subject to terms and conditions set out in regulations.

Background: Typically, permit applications are dealt with under Section 25 of these regulations (see #168 above for reference). Projects requiring a Class B permit are similar to those described under # 168 except that they are smaller in scale. There have not been any EARP cases on this provision.

(170) Section 5 of the Territorial Quarrying Regulations under the Territorial Lands Act

Minister may lease territorial lands for quarrying.

Background: Since quarrying could raise environmental concerns, this provision is listed under C-13. There have not been any EARP cases on the provision.

(171) Subsection 12(2) of the Territorial Quarrying Regulations under the Territorial Lands Act

Territorial land agency may issue permit to take material from lands.

Background: since such activities could raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving this provision.

(172) Subsection 10(1) of the Yukon Forest Protection Regulations under the Territorial Lands Act

Forest officer may issue permit to start an open fire or operate an engine during fire season.

Background: A typical permit would allow the burning of slash during the fire season. Since such activities could pose environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving the provision.

(173) Section 4 of the Yukon Timber Regulations under the Territorial Lands Act

Minister may issue permit for cutting and removal of trees.

Background: Since these activities could raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases on the provision.

(174) Section 7 of the Yukon Timber Regulations under the Territorial Lands Act

Forest Officer may issue permit to certain classes of people to cut timber for certain uses.

Background: Since such projects could raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving the provision.

(175) Section 5 of the Yukon Archaeological Sites Regulations under the Yukon Act[3]

Minister may issue permit for the excavation or investigation of an archaeological site; or for the removal or collection of archaeological specimens.

Background: This power has been delegated(by letter) to the Commissioner of the Yukon Territory. Since such excavation activities can raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving the provision.

(176) Subsection 48(1) of the Yukon Placer Mining Act[3]

Mining recorder may give grant of a located claim.

Background: Since issuing such a permit allows a person to undertake exploration activities - and they could raise environmental concerns - the provision is listed under C-13. There have not been any EARP cases involving the provision.

(177) Section 78 of the Yukon Placer Mining Act[3]

Mining recorder may grant permission to dig a drain or tunnel for drainage purposes.

Background: This is a seldomly used provision since water-related activities are regulated under the Northern Inland Waters Act. There have not been any EARP cases involving this provision.

(178) Subsection 18(1) of the Yukon Quartz Mining Act[3]

Minister may grant a location for the mining of iron and mica.

Background: Since such activities could raise environmental concerns, the provision is listed under C-13. There have not been any EARP cases involving this provision.

(179) **Subsection 77(1) of the Yukon Quartz Mining Act[3]**

Minister may grant lease of available surface rights for a mineral claim.

Background: This is a seldomly used provision since surface leases are issued under the Territorial Lands Act. There have not been any EARP cases involving this provision.

(180) **Subsection 78(2) of the Yukon Quartz Mining Act[3]**

Commissioner may authorize timber agent to issue permit to cut timber.

Background: Since this seldomly-used provision could enable environmentally sensitive projects to proceed, it is listed under C-13. There have not been any EARP cases involving the provision.

(181) **Section 122 of the Yukon Quartz Mining Act[3,19]**

Minister may grant lease of land for a mill site. Authority of G and C required if land valuable for water-power purposes.

Background: This provision is seldomly used since land leases are issued under the Territorial Lands Act. There have not been any EARP court cases involving the provision.

(182) Section 125 of the Yukon Quartz Mining Act[3]

Permission to run a drain.

Background: This provision is seldomly used since water related activities are regulated under the Northern Inland Waters Act. There have not been any EARP cases involving the provision.

NOTE: Department or Agency administering specific provisions:

1 Atomic Energy Control Board

2 Agriculture

3 Department of Indian Affairs and Northern Development

4 Canada Oil and Gas Lands Administration (note these functions are being transferred to EMR and DIAND and they will subsequently be shifted to NEB once the National Energy Board Act has been amended to produce this shift in responsibilities).

5 Department of Communications

6 Environment Canada

7 Employment and Immigration Canada

8 Energy, Mines, and Resources

9 Canada-Newfoundland Board

10 Canada-Nova Scotia Board

11 Fisheries and Oceans

12 Forestry Canada

13 National Archives

14 National Energy Board

15 National Research Council

16 National Transportation Agency

17 Transport Canada

18 Various - More than one department administers

19 Governor in Council